STATE OF MICHIGAN

COURT OF APPEALS

BAY HOME MEDICAL & REHAB, INC., Petitioner-Appellant,	UNPUBLISHED March 22, 2005
v	No. 250089 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-288947

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Petitioner appeals of right from the Tax Tribunal's order granting respondent summary disposition under MCR 2.116(C)(10) with regard to a use tax assessment issued by respondent for the period March 1, 1996, to September 30, 1999. We affirm in part and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner first argues it was denied due process of law because the Tax Tribunal granted respondent's motion for summary disposition without the benefit of petitioner's response to that motion and before the time had lapsed for filing a response under 1999 AC, R 205.1230. Due process is a flexible concept that calls for such procedural safeguards as the situation demands. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). Due process in a civil action generally requires nothing more than an opportunity to be heard in a meaningful manner. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995); *Kostyu v Dep't of Treasury*, 147 Mich App 89, 92; 382 NW2d 739 (1985).

We agree that the Tax Tribunal acted contrary to 1999 AC, R 205.1230 by deciding respondent's motion for summary disposition before the fourteen-day period for filing a response expired. Further, we disapprove of the Tax Tribunal's procedure in this case. At a minimum, the Tax Tribunal should have informed petitioner of its intent to grant immediate consideration of respondent's motion and allow petitioner a truncated period of time in which to file its response brief. This is particularly true where, as here, the issue being decided is dispositive of the case. However, the Tax Tribunal's incorrect application of its rules can be harmless error. See 1999 AC, R 205.1111(4), MCR 2.613(C), and *Kern v Pontiac*, 93 Mich App 612, 623; 287 NW2d 603 (1979). Further, the mere violation of a procedural rule does not constitute a due process error. *People v Toma*, 462 Mich 281, 296; 613 NW2d 694 (2000).

Here, the Tax Tribunal's procedural error did not amount to a due process error because petitioner had previously filed a prehearing brief, and the Tax Tribunal had directed that the prehearing briefs address the factual and legal issues in the case, with supporting exhibits, statutes, and case law. Hence, the Tax Tribunal's action, while premature, did not run the risk that petitioner would be denied an opportunity to present evidence in support of material factual disputes. The Tax Tribunal could reasonably rely on petitioner's prehearing brief to ascertain the disputed legal issues and whether any material factual dispute precluded summary disposition.

Even if the Tax Tribunal mistakenly relied on the adequacy of petitioner's prehearing brief, petitioner had an opportunity to bring the error to the Tax Tribunal's attention by moving for rehearing or reconsideration. 1999 AC, R 205.1288. An opportunity for rehearing can satisfy due process. *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502 (1994); *Great Lakes Division of Nat'l Steel Corp, supra* at 406. Although petitioner did not file such a motion and, in fact, opposed a motion to remand for this purpose in this Court, petitioner's opportunity to be heard, before and after the Tax Tribunal's decision, comported with due process.

Next, petitioner challenges the qualifications of the tribunal judge. Specifically, petitioner maintains tribunal judges are required to satisfy the minimal experience requirements set forth in Article 6 section 9 of the Michigan Constitution. We decline to address petitioner's additional claim of constitutional error challenging the tribunal judge's qualifications because this issue was not raised in the Tax Tribunal and we lack a sufficient factual record to address it. *Great Lakes Division of Nat'l Steel Corp, supra* at 426. Moreover, the Tax Tribunal is not an Article 6 court under the Michigan Constitution. Petitioner invoked the Tax Tribunal's jurisdiction to review the use tax assessment. Petitioner could have obtained judicial review of the use tax assessment in the Court of Claims (an Article 6 court). MCL 205.22. Hence, neither the interests of justice nor judicial economy warrant appellate review of this unpreserved issue. *Great Lakes Division of Nat'l Steel Corp, supra* at 426.

Turning to the merits of the issue presented, our review is limited to whether the decision was authorized by law. Const 1963, art 6, § 28; see also *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 18-19; 678 NW2d 619 (2004) (the test is whether the Tax Tribunal erred in applying the law or adopted a wrong principle); *Haji, supra* at 88. We review de novo the decision to grant summary disposition as a question of law. *Maiden, supra* at 118; *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Issues involving the interpretation and application of a statute are questions of law that we also review de novo. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002).

The primary goal of statutory construction is to ascertain the intent of the Legislature. *Michigan Bell Telephone Co v Dep't of Treasury*, 229 Mich App 200, 207; 581 NW2d 770 (1998). Tax exemptions are strictly construed against a taxpayer, but must nonetheless be interpreted according to the common and approved usage, unless the construction is inconsistent with the Legislature's manifest intent. *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 151; 549 NW2d 837 (1996).

Because petitioner filed a timely response to respondent's motion for summary disposition, we have considered petitioner's response in reviewing the Tax Tribunal's decision. Although we are not fully in accord with the Tax Tribunal's reasoning, we agree that there is no

genuine issue of material fact that petitioner is not entitled to a one hundred percent exemption against its rental receipts for the converted modified van.

At the time pertinent to the use tax assessment issued by respondent, MCL 205.94(1)(p)[1] exempted from use tax, in relevant part,

> [a] hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription . . . .

The statute, as applied in this case, is not ambiguous. MCL 205.94(1)(p) plainly requires that, to qualify for exemption, the "apparatus, device, or equipment" must "assist the disabled person to lead a reasonably normal life." The necessity of a written prescription is indicative of a plain legislative intent that there be a medical purpose for the apparatus, device, or equipment.

There is nothing peculiar about a van that serves a medical purpose. "[A] van is simply a means of transportation." *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 350; 656 NW2d 175 (2003), amended 468 Mich 1216 (2003). It makes travel over distances quicker and more convenient. *Hosking v State Farm Mut Automobile Ins Co,* 198 Mich App 632, 637; 499 NW2d 436 (1993). It is the lift system added to a van that ameliorates the effects of the disabled person's condition. *Weakland, supra* at 350. Stated otherwise, the lift system assists a disabled person in leading a reasonably normal life by enabling the disabled person to use the van. Hence, only the lift system qualifies for the medical exemption.

Our conclusion that the entire van does not qualify for the medical exemption under the plain language of MCL 205.94(1)(p) is supported by the fact that respondent, by rule, does not identify a van or any item similar to a van as an exempt medical appliance. See 1999 AC, R 205.139, which recognizes only a hydraulic lift. This rule, having been promulgated under the Administrative Procedures Act, MCL 24.271 *et seq.*, has the force of law. *Danse Corp, supra* at 181.

Even if MCL 205.94(1)(p) could be considered ambiguous, giving due deference to respondent's long-time interpretation of the statutory language, as indicated in its letter ruling under the Sales Tax Act's similar provision in MCL 205.54a, we would construe the statutory language as only allowing an exemption for the lift systems. *Catalina Marketing Sales Corp, supra* at 24; *Elias Bros Restaurants, Inc, supra* at 153. Although not promulgated as a rule, Letter Ruling 1981-9 states that the exemption applies "to items such as ramps, lifts, special seats, steering or braking mechanisms or other items designed specifically for disabled persons," but "does not apply to vehicles and options thereon which are designed for use by the general public."

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[1] A recent amendment, 2004 PA 456, effective June 28, 2004, substantially modified the exemption in MCL 205.94(1)(p), but is not applicable to this case.

Accordingly, we affirm the Tax Tribunal's decision holding that petitioner is not entitled to an exemption for one hundred percent of the rental receipts for the converted vans.

Petitioner also challenges the 7.16 percentage used by respondent to calculate the exemption allowed for the lift systems when computing the use tax for rental receipts. Petitioner maintains respondent did not properly account for the labor costs associated with the installation of the lift systems. Contrary to petitioner's argument on appeal, the Tax Tribunal did not decide this issue when granting respondent's motion for summary disposition. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Rather, the Tax Tribunal indicated that it was confining its decision to the parameters of the issues identified in petitioner's prehearing brief, which does not include a specific challenge to the 7.16 exemption percentage used by respondent. The thrust of the prehearing brief was that all rental receipts were exempt.

Because the Tax Tribunal committed a procedural error when it decided this matter on summary disposition prematurely, albeit not of constitutional magnitude, and because respondent has indicated that a remand would be appropriate, we conclude that a remand to the Tax Tribunal to address petitioner's challenge to the 7.16 exemption percentage raised in its response to respondent's motion for summary disposition is appropriate. Accordingly, we remand for this limited purpose.

Affirmed in part and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper